



## **COUNCIL CHAMBERS**

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

<b>COUNCIL MEMBERS</b>	<b>REDEVELOPMENT AGENCY</b>
Steve Tate, Mayor	Steve Tate, Chair
Greg Sellers, Mayor Pro Tempore	Greg Sellers, Vice-Chair
Larry Carr, Council Member	Larry Carr, Agency Member
Marby Lee, Council Member	Marby Lee, Agency Member
Marilyn Librers, Council Member	Marilyn Librers, Agency Member

**WEDNESDAY, JULY 15, 2009**

**AGENDA**

**JOINT MEETING**

**CITY COUNCIL SPECIAL AND REGULAR MEETING**

**AND**

**REDEVELOPMENT AGENCY REGULAR MEETING**

**6:15 P.M.**

*A Special Meeting of the City Council and Redevelopment Agency is called at 6:15 p.m. for the purpose of conducting Closed Sessions and the Council Carbon Diet Club.*

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**Steve Tate, Mayor/Chairman**

**6:15 P.M.**

**CALL TO ORDER**  
(Mayor/Chairperson Tate)

**ROLL CALL ATTENDANCE**  
(City Clerk/Agency Secretary Torrez)

**DECLARATION OF POSTING OF AGENDA**  
**Per Government Code 54954.2**  
(City Clerk/Agency Secretary Torrez)

## ***City Council Action***

### **CLOSED SESSION:**

**1.**

#### **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b)  
Number of Potential Cases: 1

## ***Redevelopment Agency Action***

### **CLOSED SESSION:**

**2.**

#### **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b)  
Number of Potential Cases: 1

### **OPPORTUNITY FOR PUBLIC COMMENT**

### **ADJOURN TO CLOSED SESSION**

### **RECONVENE**

### **CLOSED SESSION ANNOUNCEMENT**

**7:00 P.M.**

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**CITY COUNCIL REPORTS**

Mayor Pro Tempore Sellers

**CITY COUNCIL COMMITTEE REPORTS**

**CITY MANAGER'S REPORT**

**CITY ATTORNEY'S REPORT**

**OTHER REPORTS**

**PUBLIC COMMENT**

**NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.**

(See notice attached to the end of this agenda.)

**PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME  
THE ITEM IS ADDRESSED BY THE COUNCIL AND FOR THE REDEVELOPMENT AGENCY. PLEASE  
COMPLETE A SPEAKER CARD AND PRESENT IT TO THE CITY CLERK/AGENCY SECRETARY.**

(See notice attached to the end of this agenda.)

**PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE  
CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY  
COUNCIL/REDEVELOPMENT AGENCY.**

## ***City Council and Redevelopment Agency Action***

### **ADOPTION OF AGENDA**

## ***City Council Action***

### **CONSENT CALENDAR:**

#### **ITEMS 1 - 4**

The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

Time Estimate  
Consent Calendar: 1 - 10 Minutes

Page

1. **APPROVAL OF THE SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 24, 2009**..... 1

	<b>Time Estimate</b>	<b>Page</b>
	<b>Consent Calendar: 1 - 10 Minutes</b>	
2.	<b><u>AWARD MAIN AVENUE WELLS ELECTRICAL PANEL MODIFCATIONS PROJECT</u></b> .....	5
	<b><u>Recommended Action(s):</u></b>	
	1. <b><u>Approve</u></b> project Plans and Specifications	
	2. <b><u>Award</u></b> contract to Harrington Electrical Services for the Main Avenue Wells Electrical Panel Modifications project in the amount of \$98,000; and	
	3. <b><u>Authorize</u></b> expenditure of construction contingency funds not to exceed \$9,800.	
3.	<b><u>AMEND 2009-10 BUDGET TO ACCEPT ABAG PLAN INSURANCE GRANT REVENUE, AND TO APPROPRIATE FUNDS FOR EXPENDITURE</u></b> .....	9
	<b><u>Recommended Action(s):</u></b>	
	1. <b><u>Amend</u></b> the 2009-10 Budget to Increase Grant Revenue in Fund 795 General Liability Insurance by \$83,458, and	
	2. <b><u>Appropriate</u></b> Expenditures Plus Transfers Out in an Equal Amount, Including a \$15,000 Transfer to the New Traffic Study Fund.	
4.	<b><u>AUTHORIZE ACCEPTANCE OF STATE OF CALIFORNIA REGISTERED WARRANTS (IOU'S) AS VALID PAYMENT TOWARD A CITY SERVICE, FEE, PERMIT, INVOICE, TAX OR SIMILAR OBLIGATION IN THE NORMAL COURSE OF BUSINESS</u></b> .....	13
	<b><u>Recommended Action(s):</u></b> <b><u>Accept</u></b> a Resolution authorizing the City Manager to accept State of California registered warrants, commonly known as "State IOUs," as valid payment toward any City service, fee, permit, invoice, tax, or similar obligation in the normal course of business.	

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

#### **ITEMS 5 - 9**

	<b>Time Estimate</b>	<b>Page</b>
	<b>Consent Calendar: 1 - 10 Minutes</b>	
5.	<b><u>APPROVAL OF THE JOINT REGULAR CITY COUNCIL AND REGULAR REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 24, 2009</u></b> .....	19
6.	<b><u>UPDATE ON FEBRUARY 2008 BOND ISSUE</u></b> .....	35
	<b><u>Recommended Action(s):</u></b> <b><u>Accept</u></b> and <b><u>File</u></b> Report.	
7.	<b><u>FRIENDLY INN RENOVATION ARCHITECTURAL SERVICES AGREEMENT AMENDMENT</u></b> .....	37
	<b><u>Recommended Action(s):</u></b>	
	1. <b><u>Approve</u></b> Architectural Services Consultant Agreement Amendment with Weston Miles Architects in the amount of \$66,250; and	
	2. <b><u>Authorize</u></b> the Executive Director to execute Consultant Agreement Amendment subject to Agency Counsel approval.	
8.	<b><u>RATIFICATION OF THIRD AMENDMENT TO AGREEMENT WITH THE LAW FIRM OF JORGENSON, SIEGEL, McCLURE &amp; FLEGEL, LLP</u></b> .....	55
	<b><u>Recommended Action(s):</u></b>	
	1. <b><u>Ratify</u></b> completed contract work; and	
	2. <b><u>Authorize</u></b> the City Manager to execute the Third Amendment to Agreement with the Law Firm of Jorgenson, Siegel, McClure & Flegel, LLP.	

	<b>Time Estimate</b>	<b>Page</b>
	<b>Consent Calendar: 1 - 10 Minutes</b>	
9.	<b><u>ACQUISITION OF 35 EAST THIRD STREET (JUNGKEIT)</u></b> .....	69
	<b><u>Recommended Action(s):</u></b>	
	1. <b><u>Adopt</u></b> a Resolution of the Morgan Hill Redevelopment Agency approving the Purchase and Sale Agreement for 35 East Third Street from Dwight E. Jungkeit and Lola L. Jungkeit, Trustees of the Jungkeit Family Trust, dated March 31, 2009 for \$587,500 plus escrow and closing costs, and authorizing the Executive Director to execute all documents and make minor modifications as necessary to consummate this transaction; and	
	2. <b><u>Appropriate</u></b> \$587,500 plus closing costs from the Agency funds for this purchase.	

## *City Council and Redevelopment Agency Action*

### **CONSENT CALENDAR:**

#### **ITEMS 10 - 13**

	<b>Time Estimate</b>	<b>Page</b>
	<b>Consent Calendar: 1 - 10 Minutes</b>	
10.	<b><u>ACCEPTANCE OF SKATEBOARD/BMX PARK</u></b> .....	95
	<b><u>Recommended Action(s):</u></b>	
	1. <b><u>Accept</u></b> as Complete the Skateboard/BMX Park at a final cost of \$593,615; and	
	2. <b><u>Direct</u></b> the City Clerk to file the Notice of Completion with the County Recorder's Office.	
11.	<b><u>ACCELERATION OF CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS</u></b> .....	99
	<b><u>Recommended Action(s):</u></b> <b><u>Confirm</u></b> staff plan for accelerating the FY 2009/10 Capital Improvements Program (CIP)	
12.	<b><u>THIRD STREET PROMENADE – CONSTURCUTION UPDATE - JULY PROGRESS REPORT</u></b> .....	103
	<b><u>Recommended Action(s):</u></b> Information Only	
13.	<b><u>SUBORDINATION AUTHORITY FOR BMR UNIT REFINANCE REQUEST</u></b> .....	105
	<b><u>Recommended Action(s):</u></b> <b><u>Adopt</u></b> Resolution Delegating Authority to the City Manager/Executive Director to Approve Subordination and Refinance Request for Below Market (BMR) units.	

## *City Council Action*

### **PUBLIC HEARINGS:**

	<b>Time Estimate</b>	<b>Page</b>
14.	<b>3 Minutes</b>	
	<b><u>CLOSE HEARING AND NO FURTHER ACTION CONCERNING ADPTION OF RESOLUTION OF NECESSITY FOR PROPERTY ACQUISITION FOR A MUNICIPAL PARKING LOT</u></b> .....	109
	Public Hearing Opened.	
	Please Limit Your Remarks to 3 Minutes. Public Hearing Closed	
	Council Discussion.	
	Action- <b><u>Close</u></b> the Public Hearing and take no further action	

	Time Estimate		Page
15.	15 Minutes	<b><u>2009 WEED ABATEMENT PROGRAM ASSESSMENT REPORT – PROGRAM CHARGES</u></b> .....111 Public Hearing Opened. Please Limit Your Remarks to 3 Minutes. Public Hearing Closed Council Discussion. Action- <b><u>Adopt Resolution (A)</u></b> Ordering the Final Report on the 2009 Weed Abatement Program Assessment Report – Program Charges be transmitted to the Santa Clara County Assessor’s Office and that Liens be Posted Against the Properties on the Report (excluding Assessor’s Parcel Nos. 726-48-007 thru 012, 728-02-003, and 728-02-012). Action- <b><u>Adopt Resolution (B)</u></b> Ordering the Final report on the 2009 Weed Abatement Program Assessment Report – Program Changes be transmitted to the Santa Clara County Assessor’s Office and that a lien be Posted Against the Property on the Report for APN 728-02-003	
16.	10 Minutes	<b><u>ZONING AMENDMENT &amp; DEVELOPMENT AGREEMENT, ZA-09-01/DA-09-01: MCLAUGHLIN-MALECH</u></b> .....137 Public Hearing Opened. Please Limit Your Remarks to 3 Minutes. Public Hearing Closed Council Discussion. Action- <b><u>Adopt</u></b> Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (MMRP) Action- <b><u>Waive</u></b> the First and Second Reading of Zoning Amendment Ordinance Action- <b><u>Introduce</u></b> Zoning Amendment Ordinance Action- <b><u>Waive</u></b> the First and Second Reading of Development Agreement Ordinance Action- <b><u>Introduce</u></b> Development Agreement Ordinance	

## City Council Action

### OTHER BUSINESS:

	Time Estimate		Page
17.	30 Minutes	<b><u>DOWNTOWN IMPLEMENTATION PROGRAM – UPDATE ON FIRST PHASE CINEMA MIXED-USE PROJECT</u></b> .....177 <b><u>Recommended Action(s):</u></b> 1. <b><u>Approve</u></b> appropriation of \$310,000 to complete improvements for the temporary re-use of the existing Granada; and 2. <b><u>Direct</u></b> staff to prepare an RFI/Q for the First Phase Cinema Mixed-Use Project and Community Outreach Process.	
18.	30 Minutes	<b><u>DISCUSSION OF REQUIREMENTS RELATED TO ISSUANCE OF BUILDING PERMIT FOR AMERICAN INSTITUTE OF MATHEMATICS (AIM) BUILDING</u></b> .....183 <b><u>Recommended Action(s):</u></b> That the City Council direct staff to: 1. As selected by the City Council, take one of the following approaches with the applicant regarding geologic report matters: a. Require that the applicant submit geologic reports that comply with state and local codes, through addressing the recommendations contained in the Pacific Geotechnical and Cotton Shires peer review letters, prior to issuance of a foundation or building permit for the AIM structure. <b><u>Applicant</u></b> to pay for all services provided by City Geologist which are needed to coordinate scope of work, methodologies, and review of reports. OR b. Require that the applicant submit geologic reports that comply with state and local codes, through addressing the recommendations contained in the Pacific Geotechnical and Cotton	

Shires peer review letters, prior to issuance of a foundation or building permit for the AIM structure. City to pay for all services provided by City Geologist which are needed to coordinate scope of work, methodologies, and review of reports, beyond the \$8,500 already provided by the applicant.

**OR**

- c. Issue a Request for Proposals and carry out consultant selection process for a third peer review engineering geologist, with the applicant invited to observe the consultant selection interviews but the City responsible for consultant selection, based on a mutual advance agreement of city and applicant to pursue the recommendations of the selected peer reviewer. Authorize the City Manager to enter into a contract with the selected consultant, using up to \$6,000 from Community Development Fund to pay for services, with the selected consultant to conduct peer review of the applicant's Limited Engineering Geologic Study Report and the two existing peer reviews, and prepare recommendations. Applicant to then pay for any subsequent services that may be needed from selected consultant, in order to carry out the recommendations of the selected consultant.
2. **Encourage** the applicant to submit plans for the entire AIM structure; as well as for the potable water supply system, and the water storage system approved by fire department, as soon as feasible.
3. **Schedule** a future agenda item for the Council to determine eligibility for exemption, waiver and/or credit of impact fees to be paid by the applicant for the AIM building, and to review the applicant's proposed frontage improvement plans and specifications.

**19. 10 Minutes**      **APPROVE COOPERATIVE AGREEMENT BETWEEN THE CITY OF MORGAN HILL AND THE STATE OF CALIFORNIA FOR THE TENNANT/101 INTERCHANGE IMPROVEMENT PROJECT**.....193

**Recommended Action(s):**

1. **Approve** Resolution for Cooperative Agreement (Exhibit 1) between the City of Morgan Hill and the State of California for the Tennant Avenue and State Highway Route 101 Interchange Improvement project, and authorize the City Manager to execute the agreement on behalf of the City; and
2. **Direct** staff to proceed with the project immediately and return to the Council at time of construction award with recommendation of an appropriation of RDA funds as necessary.

**20. 10 Minutes**      **EXTENSION OF THE BELOW MARKET RATE (BMR) REDUCTION PROGRAM** .....217

**Recommended Action(s):** **Support** modification of the current BMR reduction program, to allow applicants to apply for Development Agreement Amendments that would reflect a full waiver of the BMR commitment if construction is commenced by September 30, 2010 (12 month extension from existing deadline), and a reduced BMR commitment if construction is commenced by April 30, 2011 (6 month extension from existing deadline).

**FUTURE COUNCIL AGENCY-INITIATED AGENDA ITEMS:**

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

**ADJOURNMENT**

### **NOTICE**

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act that are distributed to a majority of the legislative body less than 72 hours prior to an open session, will be made available for public inspection at the Office of the City Clerk at Morgan Hill City Hall located at 17555 Peak Avenue, Morgan Hill, CA, 95037 at the same time that the public records are distributed or made available to the legislative body. (Pursuant to Government Code 54957.5)

### **PUBLIC COMMENTS ON ITEMS NOT APPEARING ON AGENDA**

Following the opening of Council/Agency business, the public may present comments on items *NOT* appearing on the agenda that are within the Council's/Agency's jurisdiction. Should your comments require Council/Agency action, your request will be placed on the next appropriate agenda. No Council/Agency discussion or action may be taken until your item appears on a future agenda. You may contact the City Clerk/Agency Secretary for specific time and dates. This procedure is in compliance with the California Public Meeting Law (Brown Act) G.C. 54950.5. Please limit your presentation to three (3) minutes.

### **PUBLIC COMMENTS ON ITEMS APPEARING ON AGENDA**

The Morgan Hill City Council/Redevelopment Agency welcomes comments from all individuals on any agenda item being considered by the City Council/Redevelopment Agency. Please complete a Speaker Card and present it to the City Clerk/Agency Secretary. This will assist the Council/Agency Members in hearing your comments at the appropriate time. Speaker cards are available on the table in the foyer of the Council Chambers. In accordance with Government Code 54953.3 it is not a requirement to fill out a speaker card in order to speak to the Council/Agency. However, it is very helpful to the Council/Agency if speaker cards are submitted. As your name is called by the Mayor/Chairman, please walk to the podium and speak directly into the microphone. Clearly state your name and address and then proceed to comment on the agenda item. In the interest of brevity and timeliness and to ensure the participation of all those desiring an opportunity to speak, comments presented to the City Council/Agency Commission are limited to three minutes. We appreciate your cooperation.

### **NOTICE**

#### **AMERICANS WITH DISABILITIES ACT (ADA)**

The City of Morgan Hill complies with the Americans with Disability Act (ADA) and will provide reasonable accommodation to individuals with disabilities to ensure equal access to all facilities, programs and services offered by the City. If you need special assistance to access the meeting room or to otherwise participate at this meeting, including auxiliary aids or services, please contact the Office of the City Clerk/Agency Secretary at City Hall, 17555 Peak Avenue or call 779-7259 or (Hearing Impaired only - TDD 776-7381) to request accommodation. Please make your request at least 48 hours prior to the meeting to enable staff to implement reasonable arrangements to assure accessibility to the meeting.

If assistance is needed regarding any item appearing on the City Council/Agency Commission agenda, please contact the Office of the City Clerk/Agency Secretary at City Hall, 17555 Peak Avenue or call 779-7259 or (Hearing Impaired only - TDD 776-7381) to request accommodation.

### **NOTICE**

Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the City Council/Agency Commission at, or prior to the Public Hearing on these matters.

### **NOTICE**

The time within which judicial review must be sought of the action by the City Council/Agency Commission which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.